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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,207	01/12/2001	Bruno Loez	BET 00/1342	8565

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EXAMINER

DICUS, TAMRA

ART UNIT PAPER NUMBER

1774

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/758,207

Applicant(s)

LOEZ, BRUNO

Examiner

Tamra L. Dicus

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 19-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The claim objection is withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 9, and 19 stands rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 554 896 to Lesca et al. in view of USPN 5,565,265 to Rubin et al. as previously presented set forth in the Office Action mailed 11/02/2004.
4. Claim 6 stands rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 554 896 to Lesca et al. in view of USPN 5,565,265 to Rubin et al. and further in view of USPN 6,268,438 to Ellul et al. as previously presented set forth in the Office Action mailed 11/02/2004.
5. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 554 896 to Lesca et al. in view of USPN 5,565,265 to Rubin et al. and further in view of USPN 5,824,415 to Kanki et al. as previously presented set forth in the Office Action mailed 11/02/2004.

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6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 554 896 to Lesca et al. in view of USPN 5,565,265 to Rubin et al. and further in view of USPN 3,891,487 to Hoey as previously presented set forth in the Office Action mailed 11/02/2004.

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 554 896 to Lesca et al. in view of USPN 5,565,265 to Rubin et al. as applied above, and further in view of USPN 6,103,345 to Oshima et al. as previously presented set forth in the Office Action mailed 11/02/2004.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 554 896 to Lesca et al. in view of USPN 5,565,265 to Rubin et al. as applied above, and further in view of USPN 6,237,294 to Rygiel as previously presented set forth in the Office Action mailed 11/02/2004.

Response to Arguments

Applicant's arguments filed 03-02-2005 have been fully considered but they are not persuasive.

Applicant argues Lesca does not teach inherently having a Shore hardness value of 30 to 50 because the Office Action fails to provide any evidence that the proposed combination of references would necessarily result in a material having said value. The Examiner does not agree because Lesca teaches the exact same composition and thus is the evidence presented to yield an inherent Shore hardness value as claimed. Further the Applicant has not provided evidence to the contrary. The *prima facie* case can be rebutted by evidence showing that the prior art products do not necessarily possess the characteristics of the claimed products. *In re Best*, 195

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USPQ 430, 433 (CCPA 1977). Once a reference teaching product appearing to be substantially identical is made the basis of a rejection, and the Examiner presents evidence or reasoning tending to show inherency, the burden shifts to the Applicant to show an unobvious difference. “[T]he PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his [or her] claimed product. Whether the rejection is based on inherency’ under 35 U.S.C. 102, on prima facie obviousness’ under 35 U.S.C. 103, jointly or alternatively, the burden of proof is the same...[footnote omitted].” See MPEP 2112.

Applicant contends Rubin emphasizes that the printability a coating layer is difficult to achieve and cites (column 1, lines 21-29). However, this citing is to the background teaching and speaks to the problem Rubin is solving by printing on coated textile.

Applicant argues that the only copolymer composition taught by RUBIN et al. is an acrylic copolymer such as butyl acrylate, ethyl acrylate and styrene acrylate copolymers (column 2, lines 34-36). However, the Examiner did not use Rubin to teach the composition as Lesca, the primary reference, teaches said composition.

Applicant alleges RUBIN et al. also fail to teach: (...) a coating layer has printed patterns on the surface said coating layer which are not bonded the textile underlayer. However, Applicant has not presented a persuasive argument because Rubin does not teach the layers above the textile underlayer are in anyway porous or that the patterns are bonded to the textile underlayer because the patterns are on the top coating layer. See col. 1, lines 49-66, especially the process explanation to completely coating the fabric twice with heat to dry the layer and then further printing on top of the coated fabric (col.1, lines 54-66). Further the Applicant has not provided evidence to the contrary.

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The combination of Lesca and Rubin is valid and thus is maintained. Ellul is still used because Ellul teaches a thermoplastic elastomeric composition of a metallocene catalyst in combination with a polyethylene (vulcanized rubber matrix) providing a low density polyethylene metallocene resin. As set forth above, as described in Applicant's disclosure on page 6 a low density metallocene resin is provided (Ellul, col. 3, line 33). Kanki is still used to teach employing primer layer in between layers to improve adhesion. Hoey is still used in the rejection to teach employing foams to under a textile fabric having printing on top, making an obvious combination to provide lightweight properties and rigidity. Oshima is still used in the rejection to teach using fabric as a tablecloth for providing practicality at col. 5, lines 30-35. Rygiel is still used to teach printed wall textiles at col. 1, lines 23-30 for providing lower cost decorated panels.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

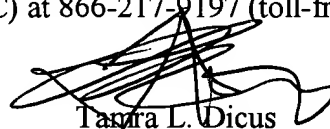
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamra L. Dicus whose telephone number is 571-272-1519. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tamra L. Dicus
Examiner
Art Unit 1774

May 18, 2005



RENA DYE
SUPERVISORY PATENT EXAMINER

A.U. 1774

5/20/05